

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 465

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO JUVENILE PROCEEDINGS; AMENDING SECTION 16-1602, IDAHO CODE, TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 16-1608, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE MAXIMUM AND MINIMUM TIME THAT A CHILD TAKEN INTO SHELTER CARE MAY BE HELD BEFORE A SHELTER CARE HEARING; AMENDING SECTION 16-1609, IDAHO CODE, TO REVISE PROVISIONS RELATING TO NOTIFICATION OF PARENTS REGARDING SHELTER CARE HEARINGS; AND AMENDING SECTION 39-8206, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CLAIMS OF PARENTAL RIGHTS AND SHELTER CARE HEARINGS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 16-1602, Idaho Code, be, and the same is hereby amended to read as follows:

16-1602. DEFINITIONS. For purposes of this chapter:

(1) "Abused" means any case in which a child has been the victim of:

(a) Conduct or omission resulting in skin bruising, bleeding, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence; or

(b) Sexual conduct, including rape, molestation, incest, prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, or other similar forms of sexual exploitation harming or threatening the child's health or welfare or mental injury to the child.

(2) "Abandoned" means the failure of the parent to maintain a normal parental relationship with his child including, but not limited to, reasonable support or regular personal contact. Failure to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment.

(3) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

(4) "Adjudicatory hearing" means a hearing to determine:

(a) Whether the child comes under the jurisdiction of the court pursuant to the provisions of this chapter;

(b) Whether continuation of the child in the home would be contrary to the child's welfare and whether the best interest of the child requires protective supervision or vesting legal custody of the child in an authorized agency.

(5) "Aggravated circumstances" includes, but ~~are~~ is not limited to:

1 (a) Circumstances in which the parent has engaged in any of the follow-
2 ing:

3 (i) Abandonment, chronic abuse or chronic neglect of the child.
4 Chronic neglect or chronic abuse of a child shall consist of abuse
5 or neglect that is so extreme or repetitious as to indicate that
6 return of the child to the home would result in unacceptable risk
7 to the health and welfare of the child.

8 (ii) Sexual abuse against a child of the parent. Sexual abuse, for
9 the purposes of this section, includes any conduct described in
10 section 18-1506, 18-1506A, 18-1507, 18-1508, 18-1508A, 18-6101,
11 18-6108 or 18-6608, Idaho Code.

12 (iii) Torture of a child; any conduct described in the code sec-
13 tions listed in section 18-8303(1), Idaho Code; battery or an
14 injury to a child that results in serious or great bodily in-
15 jury to a child; voluntary manslaughter of a child, or aiding or
16 abetting such voluntary manslaughter, soliciting such voluntary
17 manslaughter or attempting or conspiring to commit such voluntary
18 manslaughter;

19 (b) The parent has committed murder, aided or abetted a murder, so-
20 licited a murder or attempted or conspired to commit murder; or

21 (c) The parental rights of the parent to another child have been termi-
22 nated involuntarily.

23 (6) "Authorized agency" means the department, a local agency, a person,
24 an organization, corporation, benevolent society or association licensed
25 or approved by the department or the court to receive children for control,
26 care, maintenance or placement.

27 (7) "Case plan hearing" means a hearing to approve, modify or reject the
28 case plan as provided in section 16-1621, Idaho Code.

29 (8) "Child" means an individual who is under the age of eighteen (18)
30 years.

31 (9) "Circumstances of the child" includes, but is not limited to, the
32 joint legal custody or joint physical custody of the child.

33 (10) "Commit" means to transfer legal and physical custody.

34 (11) "Concurrent planning" means a planning model that prepares for and
35 implements different outcomes at the same time.

36 (12) "Court" means district court or magistrate's division thereof, or
37 if the context requires, a magistrate or judge thereof.

38 (13) "Custodian" means a person, other than a parent or legal guardian,
39 to whom legal or joint legal custody of the child has been given by court or-
40 der.

41 (14) "Department" means the department of health and welfare and its au-
42 thorized representatives.

43 (15) "Disability" means, with respect to an individual, any mental or
44 physical impairment which substantially limits one (1) or more major life
45 activity of the individual including, but not limited to, self-care, man-
46 ual tasks, walking, seeing, hearing, speaking, learning or working, or a
47 record of such an impairment, or being regarded as having such an impairment.
48 Disability shall not include transvestism, transsexualism, pedophilia,
49 exhibitionism, voyeurism, other sexual behavior disorders, or substance use
50 disorders, compulsive gambling, kleptomania or pyromania. Sexual prefer-

1 ence or orientation is not considered an impairment or disability. Whether
 2 an impairment substantially limits a major life activity shall be determined
 3 without consideration of the effect of corrective or mitigating measures
 4 used to reduce the effects of the impairment.

5 (16) "Family or household member" shall have the same meaning as in sec-
 6 tion 39-6303(6), Idaho Code.

7 (17) "Foster care" means twenty-four (24) hour substitute parental care
 8 for children placed away from their parents or guardians by persons who may
 9 or may not be related to the children and for whom the state agency has place-
 10 ment and care responsibility.

11 (18) "Grant administrator" means the supreme court or any organization
 12 or agency as may be designated by the supreme court in accordance with such
 13 procedures as may be adopted by the supreme court. The grant administrator
 14 shall administer funds from the guardian ad litem account in accordance with
 15 the provisions of this chapter.

16 (19) "Guardian ad litem" means a person appointed by the court pursuant
 17 to a guardian ad litem volunteer program to act as special advocate for a
 18 child under this chapter.

19 (20) "Guardian ad litem coordinator" means a person or entity receiving
 20 moneys from the grant administrator for the purpose of carrying out any of
 21 the duties set forth in section 16-1632, Idaho Code.

22 (21) "Guardian ad litem program" means the program to recruit, train and
 23 coordinate volunteer persons to serve as guardians ad litem for abused, ne-
 24 glected or abandoned children.

25 (22) "Homeless," as used in this chapter, shall mean that the child is
 26 without adequate shelter or other living facilities, and the lack of such
 27 shelter or other living facilities poses a threat to the health, safety or
 28 well-being of the child.

29 (23) "Law enforcement agency" means a city police department, the pros-
 30 ecuting attorney of any county, state law enforcement officers, or the of-
 31 fice of a sheriff of any county.

32 (24) "Legal custody" means a relationship created by court order, which
 33 vests in a custodian the following rights and responsibilities:

34 (a) To have physical custody and control of the child, and to determine
 35 where and with whom the child shall live.

36 (b) To supply the child with food, clothing, shelter and incidental ne-
 37 cessities.

38 (c) To provide the child with care, education and discipline.

39 (d) To authorize ordinary medical, dental, psychiatric, psychologi-
 40 cal, or other remedial care and treatment for the child, including care
 41 and treatment in a facility with a program of services for children; and
 42 to authorize surgery if the surgery is deemed by two (2) physicians li-
 43 censed to practice in this state to be necessary for the child.

44 (e) Where the parents share legal custody, the custodian may be vested
 45 with the custody previously held by either or both parents.

46 (25) "Mental injury" means a substantial impairment in the intellectual
 47 or psychological ability of a child to function within a normal range of per-
 48 formance and/or behavior, for short or long terms.

49 (26) "Neglected" means a child:

(a) Who is without proper parental care and control, or subsistence, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them; however, no child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being, but this subsection shall not prevent the court from acting pursuant to section 16-1627, Idaho Code; or

(b) Whose parents, guardian or other custodian are unable to discharge their responsibilities to and for the child and, as a result of such inability, the child lacks the parental care necessary for his health, safety or well-being; or

(c) Who has been placed for care or adoption in violation of law; or

(d) Who is without proper education because of the failure to comply with section 33-202, Idaho Code.

(27) "Permanency hearing" means a hearing to review, approve, reject or modify the permanency plan of the department, and review reasonable efforts in accomplishing the permanency plan.

(28) "Permanency plan" means a plan for a continuous residence and maintenance of nurturing relationships during the child's minority.

(29) "Protective order" means an order issued by the court in a child protection case, prior to the adjudicatory hearing, to enable the child to remain in the home pursuant to section 16-1615(5)(f), Idaho Code. Such an order shall be in the same form and have the same effect as a domestic violence protection order issued pursuant to chapter 63, title 39, Idaho Code. A protective order shall be for a period not to exceed three (3) months unless otherwise stated in the order.

(30) "Protective supervision" is a legal status created by court order in a child protective case whereby the child is in the legal custody of his or her parent(s), guardian(s) or other legal custodian(s), subject to supervision by the department.

(31) "Relative" means a child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling and half-sibling.

(32) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parents after the transfer of legal custody including, but not necessarily limited to, the right of visitation, the right to consent to adoption, the right to determine religious affiliation, the right to family counseling when beneficial, and the responsibility for support.

(33) "Shelter care" means places designated by the department for temporary care of children pending court disposition or placement.

(34) "Supportive services," as used in this chapter, shall mean services which assist parents with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations or assistance with effectively using adaptive equipment and accommodations which allow

1 parents with a disability to benefit from other services including, but not
2 limited to, Braille texts or sign language interpreters.

3 (35) "Working judicial day" means the days between and including Monday
4 through Friday and not including legal holidays.

5 SECTION 2. That Section 16-1608, Idaho Code, be, and the same is hereby
6 amended to read as follows:

7 16-1608. EMERGENCY REMOVAL.

8 (1) (a) A child may be taken into shelter care by a peace officer without
9 an order issued pursuant to subsection (4) of section 16-1611 or section
10 16-1619, Idaho Code, only where the child is endangered in his surround-
11 ings and prompt removal is necessary to prevent serious physical or men-
12 tal injury to the child or where the child is an abandoned child pursuant
13 to the provisions of chapter 82, title 39, Idaho Code.

14 (b) An alleged offender may be removed from the home of the victim of
15 abuse or neglect by a peace officer without an order, issued pursuant
16 to subsection (5) of section 16-1611, Idaho Code, only where the child
17 is endangered and prompt removal of an alleged offender is necessary to
18 prevent serious physical or mental injury to the child.

19 (2) When a child is taken into shelter care under subsection (1) of this
20 section, he may be held for a maximum of ~~forty-eight (48) hours, excluding~~
21 ~~Saturdays, Sundays and holidays~~ three (3) working judicial days and a mini-
22 imum of two (2) working judicial days, not including the day the child is taken
23 into care, unless before a shelter care hearing has been is held pursuant to
24 section 16-1615, Idaho Code, and the court orders an adjudicatory hearing.

25 (3) When an alleged offender is removed from the home under subsection
26 (1) (b) of this section, a motion based on a sworn affidavit by the department
27 must be filed simultaneously with the petition and the court shall determine
28 at a shelter care hearing, held within a maximum of twenty-four (24) hours,
29 excluding Saturdays, Sundays and holidays, whether the relief sought shall
30 be granted, pending an adjudicatory hearing. Notice of such hearing shall be
31 served upon the alleged offender at the time of removal or other protective
32 relief.

33 SECTION 3. That Section 16-1609, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 16-1609. EMERGENCY REMOVAL -- NOTICE. (1) A peace officer who takes
36 a child into shelter care under section 16-1608, Idaho Code, shall immedi-
37 ately:

38 (a) Take the child to a place of shelter; and

39 (b) Notify the court of the action taken and the place to which the child
40 was taken; and

41 (c) With the exception of a child abandoned pursuant to the provi-
42 sions of chapter 82, title 39, Idaho Code, notify each of the parents,
43 guardian or other legal custodian that the child has been taken into
44 shelter care, the type and nature of shelter care, and that the child may
45 be held for a maximum of ~~forty-eight (48) hours, excluding Saturdays,~~
46 ~~Sundays and holidays~~ three (3) working judicial days and a minimum of

1 two (2) working judicial days, not including the day the child is taken
2 into care, within which time there must be a shelter care hearing.

3 (2) A peace officer who takes a child into shelter care under section
4 16-1608, Idaho Code, shall not be held liable either criminally or civilly
5 unless the action of taking the child was exercised in bad faith and/or the
6 requirements of subsection (1) of this section are not complied with.

7 SECTION 4. That Section 39-8206, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 39-8206. CLAIM OF PARENTAL RIGHTS -- PROCEDURE. (1) A parent of the
10 child may make a claim of parental rights of an abandoned child, abandoned
11 pursuant to the provisions of this chapter, by filing a notice of claim of
12 parental rights with the vital statistics unit of the department of health
13 and welfare. The vital statistics unit of the department of health and wel-
14 fare shall maintain an abandoned child registry for this purpose which shall
15 be subject to disclosure according to chapter 3, title 9, Idaho Code. The
16 department shall provide forms for the purpose of filing a claim of parental
17 rights, and the forms shall be made available through the vital statistics
18 unit of the Idaho department of health and welfare and in the office of the
19 county clerk in every county of this state. Any parent claiming a parental
20 right of an abandoned child, abandoned pursuant to the provisions of this
21 chapter, shall file the form with the vital statistics unit of the department
22 of health and welfare. The form must be filled out completely and provide the
23 name and address for service of the person asserting the parental claim and
24 set forth the approximate date the child was left in a safe haven. The form
25 must be signed by the person claiming the parental right and be witnessed
26 before a notary public. The department shall record the date and time the
27 claim of parental rights is filed with the department. The claim shall be
28 deemed to be duly filed with the department as of the date and time recorded
29 on the claim by the department. To be valid, a claim of parental rights must
30 be filed before an order terminating parental rights is entered by the court.
31 A parent that fails to file a claim of parental rights prior to entry of an or-
32 der terminating their parental rights is deemed to have abandoned the child
33 and waived and surrendered any right in relation to the child, including the
34 right to notice of any judicial proceeding in connection with the termina-
35 tion of parental rights or adoption of the child. Registration of notice
36 of commencement of paternity proceedings pursuant to chapter 15, title 16,
37 Idaho Code, shall not satisfy the requirements of this section.

38 (2) Prior to the time set for hearing on the petition to terminate
39 parental rights filed by the department of health and welfare, and prior to
40 entry of an order terminating parental rights by the court, the department
41 of health and welfare shall obtain and file with the court a certificate from
42 the vital statistics unit of the department of health and welfare, signed by
43 the state registrar of vital statistics, which certificate shall state that
44 a diligent search has been made of the registry of claims of parental rights
45 of abandoned children, abandoned pursuant to this chapter, and shall set
46 forth the results of that search.

47 (3) If a claim of parental rights is made before an order terminating
48 parental rights is entered by the court, notice pursuant to section 16-2007,
49 Idaho Code, will be required and the court shall hold the action for invol-

1 untary termination of parental rights in abeyance for a period of time not
2 to exceed sixty (60) days unless otherwise ordered by the court. During that
3 period:

4 (a) The court shall order genetic testing to establish maternity or pa-
5 ternity, at the expense of the person or persons claiming the parental
6 right.

7 (b) The department of health and welfare shall conduct an investiga-
8 tion pursuant to section 16-2008, Idaho Code, and in those cases where
9 a guardian ad litem has been appointed, the guardian ad litem shall have
10 all rights, powers and duties as provided for in chapter 16, title 16,
11 Idaho Code, and as provided for in chapter 20, title 16, Idaho Code.

12 (c) When indicated as a result of the investigation, a shelter care
13 hearing shall be conducted by the court in accordance with section
14 16-1615, Idaho Code, ~~within forty-eight (48) hours, or at an earlier~~
15 ~~time if ordered by the court~~ a maximum of three (3) working judicial days
16 and a minimum of two (2) working judicial days, not including the day the
17 child is taken into care, to determine whether the child should remain
18 in the physical custody of the department or be released to a parent or
19 other third party.

20 (d) Further proceedings shall be conducted as the court determines
21 appropriate. However, where a claim of parental rights is made before
22 an order terminating parental rights is entered by the court, a parent
23 shall not be found to have neglected or abandoned a child placed in ac-
24 cordance with this chapter solely because the child was left with a safe
25 haven.

26 (4) If there is no showing that a parent has claimed a parental right to
27 the child, the department of health and welfare shall file with the court a
28 certificate from the vital statistics unit of the department of health and
29 welfare, signed by the state registrar of vital statistics, stating that a
30 diligent search has been made of the registry of parental claims for children
31 abandoned pursuant to the provisions of this chapter and that no parental
32 claim has been made. The certificate shall be filed with the court prior to
33 the entrance of the final order of termination of parental rights.